



**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

---

In the Matter of the Denial of a Driveway Permit to  
the School District of Waupaca

---

Case No. TR-99-0024

**FINAL DECISION**

By letter dated July 1, 1999, the Department of Transportation denied the School District of Waupaca's application for a driveway access permit. By letter dated August 2, 1999, the School District filed with the Division of Hearings and Appeals a request for hearing to review the Department's denial. Pursuant to due notice a hearing was held on March 7, 2000, in Waupaca, Wisconsin, before Mark J. Kaiser, Administrative Law Judge. The parties filed written arguments after the hearing. The last submittal was received on April 19, 2000.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the parties to this proceeding are certified as follows:

School District of Waupaca, by

Attorney John W. Hart  
100 South Main Street  
Waupaca, WI 54981

Wisconsin Department of Transportation, by

Attorney Fredrick G. Wisner  
P. O. Box 7910  
Madison, WI 53707-7910

The Administrative Law Judge issued a proposed decision on June 6, 2000. No comments on the Proposed Decision were received. The Proposed Decision is adopted as the final decision in this matter.

## Findings of Fact

The Administrator finds:

1. The School District of Waupaca (District) acquired two contiguous parcels of property, a 120 acre parcel and a 17 acre parcel, in the Town of Farmington, Waupaca County. The property abuts the north side of State Trunk Highway 22 (STH 22) and the west side of King Road. The District is in the process of constructing a new high school on the 120 acre parcel and an outdoor athletic field on the 17 acre parcel. The new high school is scheduled to open in September, 2000.

2. The new high school has two driveway accesses off King Road. The District applied to the Wisconsin Department of Transportation (Department) for a third driveway access to the property off STH 22. By letter dated January 20, 1999, the Department's District Office denied the application (Exh. 6). The denial was reviewed and upheld by the Department's District Director (Exh. R-4). The District appealed the denial to the Department. By letter dated July 1, 1999, a Department administrator upheld the District's denial of the application (Exh. R-5).

3. The Department has purchased all access rights to STH 22 from the 120 acre parcel. One access point to STH 22 remains for the 17 acre parcel. This access point is shown on the right-of-way plat for this stretch of STH 22 (Exh. 7).

4. The proposed driveway access is located approximately 2000 feet west of the intersection with King Road. It would be the first driveway west of the intersection with King Road on the north side of USH 22. Four other driveways to commercial properties exist in the vicinity of the proposed driveway access. Three of the other driveways are located along the south side of USH 22 and the fourth is located along the north side of USH 22 west of the District's property. The District proposes to align its proposed driveway access to STH 22 with one of the existing driveways on the south side of USH 22.

5. In support of its application, the District submitted a Traffic Impact Analysis performed by its consultant (Ex. 8). In 1997, at the peak hours of the day, the traffic volume on STH 22 at the location of the proposed driveway was 2,900 vehicles in a 24-hour period, and the traffic volume on STH 22 at the intersection of STH 22 and King Road was 4,457 vehicles in a 16-hour period. Traffic volumes are expected to increase at a rate of two percent per year.

6. When the new high school opens in September of 2000, the anticipated enrollment will be 850 students and approximately 100 teaching and support staff. At morning and afternoon peak traffic hours, 33 school busses, along with staff, student and visitor vehicles will be entering and departing the new high school property. The District's proposed traffic pattern is that all students will access the property from the King Road driveways. The proposed STH 22 driveway access will be used only by staff and some busses.

Busses approaching the school from the east will use the proposed STH 22 driveway access and busses approaching the school from the west will use the King Road driveways. The

intent of this assignment of driveways for busses is to only allow busses to make right turns into the proposed STH 22 driveway access. This will eliminate obstructions to traffic on STH 22 from westbound busses stopped waiting for eastbound traffic on STH 22 to clear before the bus can make a left turn into the proposed driveway.

7. The Department has scheduled improvements to the intersection of STH 22 and King Road. The improvements consist of additional and longer turning lanes, a median separating opposing traffic on STH 22 and turning lanes and a median on King Road. Actuated traffic signals will also be installed at the intersection. The intersection improvements are scheduled to be completed prior to the opening of the new high school.

8. The proposed driveway access on STH 22 will facilitate traffic flow into, out of and around the new high school grounds. However, the proposed driveway access will introduce another conflict point into a highway stretch that already has several existing conflict points and increasing traffic volumes. The two driveway accesses to the new high school grounds off King Road are adequate to accommodate the property. The Department's denial of the District's application for a driveway access on STH 22 is reasonable and will increase traffic safety in the vicinity of the new high school.

### Discussion

This case presents a legal issue and a factual issue that must be decided. The legal issue is the effect of the existing "access point" from STH 22 indicated for the 17 acre parcel on the right-of-way plat. The District argues that the access point gives it the right to construct a driveway as long as the driveway is constructed according to Department standards. The Wisconsin Supreme Court discussed an abutting property owner's right to driveway access in two cases, Narloch v. DOT, 115 Wis. 2d 419, 34 N.W.2d 542 (1983) and Stefan Auto Body v. State Highway Commission, 21 Wis.2d 363, 124 N.W.2d 319, (1963). The opinion in Narloch involved three cases in which property owners were seeking compensation for loss of access rights. In Narloch, the court held "that 'existing right of access' in sec. 32.09(6)(b), Stats., includes the right of an abutting property owner to ingress and egress, and the right to be judged on the criteria for granting permits for access points under sec. 86.07(2) and Wis. Adm. Code Ch. Hy. 31 [now Ch. Trans 231, Wis. Adm. Code]." 115 Wis. 2d 419, at 432.

In Stefan, the court recognized that a person who owns property abutting a public street has a right of access, or right, subject to reasonable regulation, of ingress and egress to and from the public street. Stefan involved a property owner whose property abutted a highway that became a controlled access highway and was seeking compensation for the loss of direct access to the highway. The court found that the plaintiff in Stefan had access to the controlled access highway by means of a frontage road and held that since the plaintiff had reasonable access, albeit more circuitous access than he had previously, he was not entitled to compensation. In the instant case, when the 17 acre parcel was owned separately from the 120 acre parcel, the access point along STH 22 shown on the right-of-way plat was the only means of ingress and egress to the property. After the 17 acre parcel was acquired by the District access to the property was

available from the driveways along King Road. The access point along STH 22 is no longer necessary for ingress and egress to the property.

The access point indicated on the right-of-way plat does not guarantee the District a driveway at that location; it only gives it the right to apply for a driveway access permit pursuant to sec. 86.07(2), Stats. The District did file an application for a driveway access permit which the Department considered and denied. Sec. 86.07(2), Stats., does not expressly state that the Department may deny an application for a driveway access permit to a state trunk highway. The section only provides that “[n]othing herein shall abridge the right of the department . . . to make such additional rules, regulations and conditions not inconsistent herewith as may be deemed necessary and proper for the preservation of highways, or for the safety of the public, and to make the granting of any such permit conditional thereon.” Arguably, this language can be interpreted to mean the Department has the power to impose conditions on a permit for driveway access, but not to deny the application for a permit altogether. However, sec. 86.073(1), Stats., sets forth the procedure for reviewing the denial or revocation of a permit issued pursuant to sec. 86.07(2), Stats. The language of sec. 86.073(1), Stats., clearly establishes the legislative intent that the Department has the authority to deny an application for a permit submitted pursuant to sec. 86.07(2), Stats.

The factual issue that must be decided is whether the Department's denial of the application for a driveway access permit is reasonable pursuant to the standards set forth at sec. 86.07(2), Stats. The District has the burden of proof to show that the denial was unreasonable. The District presented evidence that a third driveway access off STH 22 will improve the flow of traffic on its school grounds. However, the driveway access from STH 22 will reduce traffic safety on STH 22 by introducing another conflict point on this stretch of highway. With the scheduled improvements to the intersection of STH 22 and King Road, this intersection can handle the increased traffic generated by the new high school. Requiring all the traffic generated by the new high school to ingress and egress from the school grounds by the driveway accesses on King Road will promote overall traffic safety in the area. The Department's denial of the application for a driveway access permit to STH 22 is reasonable and must be affirmed.

### Conclusions of Law

The Administrator concludes:

1. The School District of Waupaca has reasonable access to the grounds of the new high school for ingress and egress from the property from King Road. Additional driveway access from State Trunk Highway 22 is unnecessary and would reduce traffic safety on STH 22.

2. Pursuant to secs. 86.07(3) and 227.43(1)(bg), Stats., the Division of Hearings and Appeals has the authority to issue the following order.

Proposed Order

The Administrator orders:

The Department of Transportation's denial of the School District of Waupaca's application for a driveway access permit to STH 22 is reasonable and is hereby AFFIRMED.

Dated at Madison, Wisconsin on June 23, 2000.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705  
Telephone: (608) 266-7709  
FAX: (608) 264-9885

By: \_\_\_\_\_  
DAVID H. SCHWARZ  
ADMINISTRATOR

### **NOTICE**

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.
2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of secs. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.